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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Allowable Subject Matter

1. Claims 1, 5-14 and 17-24 are allowed.
2. The following is a statement of reasons for the indication of allowable subject matter: Applicants arguments that the combination of Voxeo Designer 2.0 in view of Pfeiffer et al., (US 20030055651), does not teach the claimed combination of elements is persuasive. Applicant's argument that "... neither Voxeo nor Pfeiffer et al., alone or in combination, disclose generating voice application code for said application, said application code representing each dialog element of said voice application as a sequence of VoiceXML elements including extended attributes to allow said tree structure of said application to be determined.", is persuasive. Claims 1, 5-14 and 17-24 are deemed allowable over cited prior art.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 16, 25 and 26 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Supreme Court precedent¹ and recent Federal Circuit decisions² indicate that a statutory "process" under 35 U.S.C. 101 must (1) be tied to another statutory category (such as a particular apparatus), or (2) transform underlying subject matter (such as an article or material) to a different state or thing. While the instant claim(s) recite a series of steps or acts to be performed, the claim(s) neither transform underlying subject matter nor positively tie to another statutory category that accomplishes the claimed method steps, and therefore do not qualify as a statutory process. Although, claims 16, 25 and 26 are directed toward a computer storage medium storing instructions to perform the method of claim 1, and a graphical user interface, and, a computer storage medium storing application code respectively, the specification only discloses software embodiments of the invention, which amounts to a computer program. A computer program does not fall within one of the statutory classes of invention under 35 USC 101, therefore, claims 16, 25 and 26 are directed toward a non-statutory subject matter.

Response to Arguments

5. Applicant's arguments with respect to claims 16, 25 and 26 have been considered but are moot in view of the new ground(s) of rejection.

¹ *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876).

² *In re Bilski*, 88 USPQ2d 1385 (Fed. Cir. 2008).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vijay B. Chawan whose telephone number is (571) 272-7601. The examiner can normally be reached on Monday Through Friday 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richmond Dorvil can be reached on (571) 272-7602. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Vijay B. Chawan/
Primary Examiner, Art Unit 2626

vbc
1/7/09